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SOUTH ASIAN AMERICANS LEADING TOGETHER

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SAALT Congressional Testimony for Senator Ben Cardin's briefing on the re-introduction of the "End Racial Profiling Act"

November 4, 2015

About SAALT

The South Asian community comprises of individuals who trace their ancestry to Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan, and Sri Lanka in addition to members of Afghan and Pastun communities as well as those from the diaspora in the Caribbean, Africa, Canada, Europe, the Middle East and other parts of Asia and the Pacific Islands. SAALT is a national, nonpartisan, non-profit organization that elevates the voices and perspectives of South Asian individuals and organizations

SAALT situated within Black Lives Matter movement

We are honored to be part of this conversation today on the eve of the criminal trial in the case of Freddie Gray. While the issues of mistrust and accountability from law enforcement have been plaguing our communities for decades, we are pleased to see attention and action from both the executive and legislative branches to address this epidemic, which is largely a result of the immensely powerful and effective Black Lives Matter Movement of which SAALT is an ally.

History of South Asians and profiling in post 9/11 context

Immediately after the attacks of September 11th, the federal government initiated the National Security Entry-Exit Registration System (NSEERS) to track border entries and exits, and allowed the government to systematically target Arabs, Middle Easterners, Muslims, and South Asians from designated countries for enhanced scrutiny. The most controversial piece of NSEERS required nonimmigrant males who were 16 years of age and older from 25 specific countries to register at local immigration offices for fingerprinting, photographs, and lengthy, invasive interrogations. More than 80,000 men underwent call-in registration and thousands were subjected to interrogations, detention, and deportation, and 13,000 were place into deportation proceedings for minor violations not related to terrorism and these efforts have not resulted in a single known terrorism-related conviction.

At the local level, we all remember when it became public knowledge that since 2002 the New York City Police Department began mapping Muslim communities and their religious, educational, and social institutions and businesses in New York City (and beyond). It deployed NYPD officers and informants to infiltrate mosques and other institutions to monitor the conversations of Muslims based on their religion and without any suspicion of wrongdoing. It even designated entire mosques as "terrorism enterprises," claiming the authority to conduct wholesale, years-long investigations into mosques'

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religious leaders, congregants, and religious and community activities. And it has conducted other forms of suspicion-less surveillance of Muslims, including the monitoring of websites, blogs, and online forums. The results of these unlawful spying activities are entered into NYPD intelligence databases, which have amassed information about thousands of law-abiding Americans. The scale of these unconstitutional and invasive practices is vast. At the same time, no mosque or Muslim community organization has been charged with terrorism by the NYPD, and a police representative has admitted that the NYPD's mapping activities did not generated a single lead or resulted in even one terrorism investigation.

And, this year we have the Countering Violent Extremism Program. The House Homeland Security Committee voted this summer to pass legislation to create this program this summer and it awaits a full floor vote. This misguided, ill-conceived, and discriminatory legislation allocates $40 million over four years for an Office for Countering Violent Extremism (CVE), led by a newly-established "Assistant Secretary for Countering Violent Extremism." The bill follows a February White House Summit that hosted numerous community leaders to discuss strategies for combating violent extremism in the US with a disproportionate focus on Islam and Muslims.

According to the FBI database, 94% of terrorist attacks in the United States between 1980 and 2005 were committed by non-Muslims. Nevertheless, government efforts to identify and crack down on extremism and terrorism through CVE continue to be characterized by a laser-like focus on Muslim communities, without acknowledging the many and diverse individuals who have engaged in domestic terrorist acts to date in the US. Continuing to grow the surveillance apparatus in Muslim communities only further undermines residents' trust in law enforcement, which we have seen in cities such as New York City and the three cities that have already piloted CVE programs.

In addition to being racist, these policies are actually ineffective and a huge drain on capital and resources; they undermine trust between targeted communities and government, and they perpetuate public misconceptions and stereotypes of targeted communities.

And, we cannot pretend there is no relationship between such policies and practices and the broader climate of hate violence we see targeting our communities.

In our most recent report from September, 2014 "Under Suspicion, Under Attack," (which we have brought copies of the executive summary for you today) we document both xenophobic political rhetoric aimed at our communities and incidents of hate violence targeting our communities around the country. We found that xenophobic political rhetoric has become more frequent, more insidious, and more likely to be featured on a national platform relative to our 2010 report. 64% of the rhetoric we documented came from national government leaders and overall 90% of the comments were motivated by anti-Muslim sentiment. Additionally, over 80% of the instances of hate violence from the report were motivated by anti-Muslim sentiment.

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Stories of Profiling

In our 2012 report "In Our Own Words" SAALT worked with our partner organization in New York City, Desis Rising Up and Moving (DRUM) to capture stories of racial profiling on our community members that include South Asians being stopped by law enforcement without cause; South Asians being questioned about their faith, national origin, and immigration status; South Asians being approached by law enforcement to spy on their own communities; and South Asian interactions with law enforcement that harm relationships with government, family, and friends.

A few snapshots from that report:

– 29-year-old Bangladeshi Muslim male restaurant worker, Woodside, Queens

A year ago, [the] FBI called me from a mobile [phone], asked my name and told me "we want to see you." Two FBI agents came to my house. They would frequently come and make false statements and ask me a lot of questions and also threaten that I cannot leave New York City. They told me that they are following me 24/7. They took my passport and green card and then returned it later. Again they reminded me that they are following me.

– 60-year-old Pakistani restaurant worker focus group participant

In 2002, I was arrested when I came back from work by FBI and ICE. I went through hell with five nights of questioning. They asked me about my [religious] affiliation or knowledge of terrorism. They asked me if I [had] any knowledge of [the] planning [for] the September 11th attacks. I had no clue why they were asking me these questions. When I refused to spy on my community and falsely trap them, I was locked up in a detention center for six months.

– 23-year-old Sikh security agent, South Ozone Park, Queens

At a movie theater in Kew Gardens, my friends and I went to see Iron Man 2 on a Friday evening. There was a couple who started calling us names referring to my turban, like "Osama bin Laden – I wouldn't want to mess with you. God knows what you be hiding in that s—t." The staff of that cinema not only noted what he said but contacted the NYPD and said there was a possible terror alert. We were escorted out and detained by 12 cops and three undercover detectives.

Advocacy history on DOJ guidance after Ashcroft issued the original guidance in 2003

As you can see from these stories, racial profiling by law enforcement has major implications within the immigration system as well in our communities.

We were hopeful that the recently issued Department of Justice guidance on race and other protected categories would close key loopholes from the 2003 guidance issued when Jon Ashcroft was Attorney General. And, we were also hopeful, that though not mandated, the Department of Homeland Security

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would also follow suit and issue a guidance that would close key loopholes that are problematic for our communities as well as communities of color at large.

To address the loopholes specifically, advocates have been organizing since 2003 for key changes to the guidance that would close loopholes for anything considered national security or border security since these are highly subjective and the exemption for all state and local law enforcement to opt out with minor exception of enforcement agencies participating in federal task forces. This is particularly important because the cases of Black men and women being killed by law enforcement are all at the state or local level and the profiling stories I just shared are also at the state and local level. In a material sense, the revised guidance does little to improve these conditions in our communities.

Additionally, the national security exemption has a particular impact on South Asian communities by:

- Excluding border and air transportation agents from coverage under the 2014 Guidance, in essence, keeps the national security and border loopholes of the 2003 Guidance intact. These exemptions disproportionately impact South Asian community members who are entering the U.S.

- Specifically condones ethnic mapping, which in the past has been used to surveil innocent Muslim communities.

- Specifically allows for source recruitment. In the past this has harmed South Asian communities and stifled the enjoyment of First Amendment activities when mosques and political organizations were infiltrated. This has also resulted in problematic prosecutions stemming from law enforcement entrapment of individuals.

Current advocacy work on implementation and coalition work

After the Department of Justice (DOJ) issued its revised guidance on race and other protected categories in 2014, SAALT convened ally groups to respond to the problematic exemptions for national security, border security, and state and local law enforcement. We issued a strong public statement, developed an issue brief to compare the 2003 and 2014 guidances (which we have also brought copies of today), and worked with the Congressional Asian Pacific American Caucus or CAPAC to issue joint letters with the Congressional Black Caucus, Congressional Hispanic Caucus, and Congressional Progressive Caucus addressed to both DOJ and DHS highlighting the problematic exemptions to the guidance. These letters also called for a stronger data collection methodology to track profiling complaints from the public as well as an effective process to ensure that profiling complaints from the public are in fact prioritized and guaranteed review.

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Additionally, SAALT hosted a convening in April with several national Muslim, Arab, and South Asian organizations that included dedicated space for civil rights allies to join and develop a strategy for addressing the loopholes with the Department of Justice. This coalition has been meeting regularly with the DOJ to address the recommendations from this meeting and integrate them in their implementation process for the guidance. We have been doing the same thing with our border allies to influence the DHS guidance. And, we continue to communicate with our South Asian community members through our National Coalition of South Asian Organizations who have been targeted by law enforcement to document their stories and provide the DOJ and DHS various scenarios on the adverse impact of the loopholes in the guidance.

Importance of ERPA and local/state implementation of similar policies

We are pleased to see such strong legislation as the End Racial Profiling Act that has consistently been introduced by Senator Cardin as well as the state of Maryland Guidance introduced by Attorney General Frosh that makes Maryland the first state to issue its own guidance. While the DOJ Guidance for the most part exempts state and local law enforcement, we hope that Maryland can be an example for other states. State and local implementation has most significant impact on our communities on a daily basis.

The current version of ERPA introduced by Senator Cardin this year goes much further than the DOJ guidance by eliminating and preventing the use of racial profiling for routine and spontaneous investigations such as traffic stops, searches, frisks, interviews, and data collection at the federal, state, and local law enforcement levels. It also prohibits the use of racial profiling for inspection and interrogation of individuals entering the U.S. Other key features of the ERPA include training requirement on racial profiling, legal options to enforce the prohibition on racial profiling, monitoring of federal, state, and local agencies on racial profiling, funding incentives to develop and implement racial profiling reduction programs, and routine evaluations by the Department of Justice on racial profiling. This coupled with Senator Cardin's legislation "Law Enforcement Trust and Integrity Act" will go a long way to build the trust that our communities deserve with the law enforcement agents tasked with protecting them.